INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement	2
Specification of errors to be urged	3
Reasons for granting the writ	4

CITATION

David Burnet v. *Julia Butterworth*, No. —, October Term, 1932	4



In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

FRANK PARDEE, ARIO PARDEE, AND GIRARD TRUST COMPANY, Trustees Under the Will of Calvin Pardee

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of David Burnet, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Third Circuit entered in the above cause on March 4, 1933, reversing a decision of the Board of Tax Appeals (R. 36).

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 23) is reported in 23 B.T.A. 846. The opinion of the Circuit Court of Appeals (R. 34) is not yet reported.

JURISDICTION

The judgment sought to be reviewed was entered March 4, 1933 (R. 36). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a testamentary trustee is entitled to deduct, in computing the net income of the trust, amounts which are distributed to the testator's widow, who elected to take an interest in the trust created by the will in lieu of her dower and statutory interests in the decedent's estate.

STATEMENT

The facts found by the Board of Tax Appeals (R. 23) may be summarized as follows:

Calvin Pardee died testate a resident of Pennsylvania on March 18, 1923. By his will he disposed of his personal belongings and left a life estate to his wife in his residence. He then gave his wife an annuity of $50,000 and left the rest of his estate to the respondents as trustees with direction to pay the annuity to her. Provision was made for the disposition of the surplus income and of the corpus of the estate after the widow's death.

The amounts thus paid to the widow by the respondents in 1924 and 1925, the tax years here involved, taken together with payments in previous

years, did not aggregate the value of the interest to which she would have been entitled had she taken against the will.

In computing the taxable income of the estate for the years involved the respondents deducted from gross income the amounts distributed to the widow. The Commissioner disallowed the deduction thus claimed and asserted a deficiency accordingly. This action was sustained by the Board of Tax Appeals. The court below reversed the Board, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that the distributions were of income *qua* income and that the widow was with respect to these distributions a true beneficiary.

2. The Circuit Court of Appeals erred in holding that income, distributed by testamentary trustees to a widow who has elected to take under the will, is deductible by the trustees although it is not taxable to the widow, thus creating an exemption not contemplated by the revenue statutes.

3. The Circuit Court of Appeals erred in deciding that the amounts distributed by the respondents to the widow in pursuance of the terms of the testamentary trust were deductible by the trustees.

4. The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

This case presents the same question as that involved in *Harold Harvey* v. *Julia Butterworth*, pending before this Court on petition for a writ of certiorari, No. [illegible], October Term, 1939. The reasons relied upon as justifying the issue of the writ in this case are presented in the petition in the *Butterworth* case, to which this Court is respectfully referred.

Respectfully submitted.

J. Crawford Biggs,
Solicitor General.

MAY 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1939